



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN OPPOSITION TO:

**H.B. NO. 6514: AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE  
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING  
MEDICAID PAYMENT INTEGRITY**

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE  
March 5, 2013

The Division of Criminal Justice respectfully recommends the committee take NO ACTION on H.B. No. 6514, An Act Concerning the Recommendations of the Legislative Program Review and Investigations Committee Concerning Medicaid Payment Integrity. While the Division appreciates and supports the worthwhile intentions behind this bill, the measure as now drafted raises serious legal and administrative concerns with regard to the information that is sought and the means through which it would be collected and reported.

The Division of Criminal Justice wishes to express its appreciation to the Legislative Program Review and Investigations Committee and to the committee's staff for the tremendous amount of time and effort devoted to the study of the Medicaid system. We welcome the input the Committee and its staff have provided to the Office of the Chief State's Attorney, and in particular the Medicaid Fraud Control Unit (MFCU) in the course of the program review study. We also wish to express at the outset our willingness to work with the Committee in an effort to resolve the concerns the Division has with H.B. No. 6514 in a fashion that will best serve all within the framework of the overall applicable state and federal laws and other requirements.

The MFCU is a federally certified (and tightly controlled) health care oversight agency. The MFCU has responsibility for, among other things, reviewing the operations of the State Department of Social Services (DSS) concerning the Medicaid program (42 U.S.C. 1007.11). Moreover, the unit is expressly required to be a "single identifiable entity of the State government," (42 U.S. C. 1007.5) that is "separate and distinct" from DSS, which can have no authority over the MFCU. 42 U.S.C. 1007.9. Given these requirements established in federal law, the Division has serious concerns about the potential implications of the "consultation" mandated in H.B. No. 6514 between DSS, the MFCU (through the Chief State's Attorney) and the Attorney General, and the requirement for the production of a joint report.

The Division also must question section (3) (c) and the legal and practical concerns that it raises, specifically whether certain of the requested information can legally be made public and further whether to do so is appropriate. For example, the MFCU (as is the case

with any law enforcement agency) receives many unsubstantiated allegations as well as information in matters that do not result in criminal prosecution. It should be noted that much of the information that may be affected by this bill is currently exempt from disclosure pursuant to Section 1-201 of the Freedom of Information Act (Division of Criminal Justice deemed not be to public agency ...). It is difficult, if not impossible, to see how the MFCU would be able to summarize allegations that it cannot release or the release of which would be inappropriate.

The same concerns apply to the disclosure of final dispositions in matters acted upon by the MFCU. In some cases, the "final disposition" by the MFCU is not legally the final disposition of a matter. In other instances the final result of a MFCU investigation may be the dismissal of the criminal charges in which case all records of the case are erased pursuant to Section 54-142a *et. seq.*

Finally, the bill raises potential separation of powers issues with regard to the exercise of prosecutorial discretion. See *State v. Angel C.*, 245 Conn. 93, 119-20 (1998); *State v. Kinchen*, 243 Conn. 690, 699 (1998); *Massameno v. Statewide Grievance Committee*, 234 Conn. 539, 575 (1995). The intricacy of negotiating plea agreements and/or other dispositions and the charge and count considerations and fashioning of compromise dispositions is very case specific. It does not lend itself to easy explanation. The same concerns apply to the requirement in the bill for disclosure of "the number of referrals declined and reason."

As previously noted in this testimony, the MFCU is a tightly controlled health care oversight agency. As such the unit is constantly monitoring its operations and providing detailed reports documenting those activities to the appropriate federal agencies. The MFCU would suggest that much of the information that would be assembled pursuant to H.B. No. 6514 is already available to some extent through the existing federal reporting process. We would be happy to meet with the Committee to discuss a potential system for sharing the existing reports (or, as appropriate, portions thereof) that would achieve the same goals as those behind H.B. No. 6514.

In conclusion, the Division of Criminal Justice wishes to express its appreciation to the Committee for the opportunity to submit input on this issue. Thank you.